STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by David Beaulieu, Commissioner, Department of Human Rights,

Complainant,

V.

Oscar Hangsleben and Bernice Hangsleben,

Respondents.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

The above-captioned matter came on for hearing before Administrative Law Judge Barbara L. Neilson on July 14, 1992, at the Polk County Courthouse in the City of Crookston, Minnesota. The record closed on August 6, 1992, when the Respondents' final response was received.

Richard L. Varco, Jr., Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. Oscar and Bernice Hangsleben, Route 3, East Grand Forks, Minnesota 56721, appeared on their own behalf, without benefit of counsel.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case. Under Minn. Stat. 363.071, the Commissioner of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

STATEMENT OF ISSUES

The issue to be determined in this case is whether or not the Respondents unlawfully discriminated against the Charging Parties, Renata Ortega, Guillermo Torres, Richard Torres, Mauro Rodriguez, or Alonzo Torres, by refusing to rent to them, refusing to accept vouchers fom Polk County Social Services in payment of rent or damage deposits, or otherwise discriminating against them in violation of the Minnesota Human Rights Act, and, if so, what relief should be granted.

Based upon all the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDING$ OF FACT

1. At all times relevant to this proceeding, the Respondents, Oscar and Bernice Hangsleben, owned apartment buildings in East Grand Forks, Minnesota, located at 1120 Third Avenue Northwest, 1128 Third Avenue Northwest, 210 Gateway Drive Northwest, and 220 Gateway Drive Northwest (hereinafter referred to collectively as "Evergreen Estates").

2. Renata Ortega, Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez are Hispanic individuals.

3. In May and June of each year, when seasonal work begins for migrant farm workers in Polk County, the racial/ethnic composition of those seeking public assistance in Polk County changes due to the number of Hispanic migrant farm workers entering the area. In addition, the percentage of Hispanics receiving financial assistance for rental damage deposits during this time period is significantly greater than the percentage of Anglos receiving such assistance.

4. A "Shelter Expense and Residence Form" (Exhibit 1) (hereinafter referred to as the "Shelter Form") is provided by Polk County Social Services to those applying for public assistance in order to require them to provide verification that they have secured a place to live in Polk County. The landlord is to fill out the shelter form and provide information regarding, inter alia, the amount of rent paid, charges included in rent payments, the amount of the damage deposit, and the number of adults and children in the rental unit. Although the Shelter Form requests information regarding "tenants" and " rent paid," landlords frequently complete these forms with respect to prospective tenants by supplying future dates or contingent information. Landlords may also satisfy Polk County requirements by supplying other information or materials with respect to prospective tenants.

5. A "Combination Relief Authorization and Verified Form," commonly referred to as a "voucher" (Exhibit 2) is issued by Polk County Social Services to those who are receiving public assistance. These vouchers are submitted by the recipient of public assistance to vendors, including landlords, and authorize vendors to furnish designated goods or services with a value not exceeding a specified amount to the aid recipient. The vendor customarily completes the voucher to verify that the authorized goods or services were in fact provided, and the County issues payment to the vendors or, if appropriate, to the aid recipient. By May of 1991, such payments were made by Polk County twice a week. Prior to the beginning of 1991, payments were not issued that frequently. Although Vouchers may be used by general assistance recipients for the payment of damage deposits and apartment rent, they generally use vouchers to pay for damage deposits and use cash assistance checks to pay for rent on an on-going basis.

6. Barbara Hilliard and her husband, Earl, were employed at Evergreen Estates as caretakers during mid-May through June of 1990. They were responsible for showing and renting apartments and keeping :hem clean.

7. Bernice Hangsleben told Barbara Hilliard that she preferred base

personnel, Area Vocational-Technical Institute students, or local people as

renters in Evergreen Estates. Ms Hangsleben required references from two local landlords and two local banks with respect to prospective tenants. She told Ms. Hilliard that most migrant people would not have the required references. Ms. Hangsleben also told Mike Vasicek, a friend of Ms. Hilliard's who helped the Hilliards out and was frequently present in the Hilliards' apartment during May through June 1990, that she was thinking about increasing the minimum length of a lease from three months to six months because Hispanic individuals were not around for that length of time.

8. Ms. Hangsleben told Ms. Hilliard that she did not want Ms. Hilliard to rent to Hispanics because Hispanics would not stay the term of the lease and were dirty, smelled, and left apartments basically destroyed. Ms. Hangsleben asked Ms. Hilliard to show Hispanics apartments in the 220 Gateway Drive Northwest building, and specified which apartments in that building she should show them. The apartments in the 220 building were more run-down than those in the other buildings comprising Evergreen Estates. They generally had older furniture, older carpeting, and were not as well-kept.

9. Ms. Hangsleben did not require a key deposit until Ms. Hilliard rented an apartment to a Hispanic family who moved into the 220 building. Ms. Hangsleben required the Hilliards to collect the key deposit after the family had signed the lease. Ms. Hangsleben told Ms. Hilliard that, once one Hispanic moved in, they all moved in, and she believed a key deposit would prevent that because they would only have a limited number of keys.

10. On one occasion during her employment as caretaker of Evergreen Estates, Ms. Hilliard showed an apartment to a Hispanic couple , rented the apartment to them, and gave them a set of keys. Ms. Hangsleben then rented the same apartment to a white couple over the weekend, even though the white couple looked at the apartment after the Hispanic couple had looked at it and it would not have been possible for her to check the couple's bank references over a weekend. The Hispanic couple was given an apartment in the 1 120 building which smelled of pet odor. The Hispanic couple complained about the odor and asked for a different apartment. Ms. Hangsleben told Ms. Hilliard that the Hispanics "could just get the hell out if they didn't like it" and she wasn't going to return their deposit. The Hispanic couple was not allowed to move during Ms. Hilliard's tenure as caretaker, even though other apartments were available at the time.

11. Ms. Hangsleben became upset with Ms. Hilliard when she rented apartments to Hispanics and told Ms, Hilliard that it was not permissible to accept vouchers in payment of rent. On one occasion, when Ms. Hilliard rented an apartment to a Hispanic tenant and accepted a voucher, Ms. Hangleben became very angry and told Ms. Hilliard in the presence of Mr. Vasicek that she didn't want her apartments to turn into "Mexican villages" like some near-by apartments. On another occasion, when Ms. Hilliard received two vouchers in the mail on behalf of Renata Ortega and another Hispanic individual in payment of rent, Ms. Hangsleben became angry and ripped up the vouchers.

12. In June of 1990, Renata Ortega sought to rent a furnished apartment at Evergreen Estates from Ms. Hilliard. While Ms. Ortego was filling out the paperwork to rent the apartment, one of her chidren played outside the apartment with the daughter of a friend and another child. Ms. Hangsleben was

cleaning apartments at the time and encountered the children. Ms. Hangsleben told Ms. 0rtega's chi Id and the fri end's daughter to leave and s a id that she did not want them there. Ms. Ortega's child told Ms. Hangsleben that his mother was renting an apartment. Ms. Hangsleben again told them to leave. She said no Mexicans were living there and said all Mexicans were liars. After they left, Ms. Hangsleben complained to Ms. Hilliard that there were "little Mexican boys" playing outside in the garbage. She also said that they were "dirty."

13. Prior to renting a furnished apartment at Evergreen Estates, Ms. Ortgega was shown an apartment that was clean and had nice furniture. She was told that that apartment was available to rent, and believed that she was renting that apartment. Ms. Ortega moved in approximately twenty days later. She was assigned to an apartment that was different than the one she was shown. The carpeting in the apartment she was given had an odor, and the apartment was not as clean and did not have as nice furniture as the apartment she had been shown. When Ms. Ortega asked Ms. Hilliard if she could rent the apartment she had been shown, Ms. Hilliard called Ms. Hangsleben. Ms. Hangsleben said she would not rent Ms. Ortega another apartment because the apartments with newer carpeting were for "white people."

14. At the time she rented an apartment at Evergreen Estates, Ms. Ortega paid $400.00 in cash and submitted a voucher for the first month's rent. She was later charged again for the rent, and was told by the migrant office that the first voucher was never turned in.

15. Ms. Ortega rented the apartment for herself and her two children (ages 10 and 14). On the application form she completed for rental of the apartment, she indicated that only one child would be living with her because, at the time she completed the rental application, she had only one child with her.

16. Ms. Ortega paid a key deposit, but was not given her apartment key until two days later and her mailbox key until ten days later. She was not able to move into her apartment or get her mail until the keys were available. During the two-day period that she was unable to move in, she and her children stayed with a friend who lived in a one-bedroom apartment. a total of seven people stayed in the one-bedroom apartment during that time.

17. Ms. Ortega lived at Evergreen Estates for four or five months. She did not leave the keys when she left the apartment, and her key deposit was not returned.

18. Ms. Ortega now lives in Mankato. She incurred child care expenses

of $65.00, gasoline expenses of $38.00, and motel expenses of $31.95 to attend
the hearing.

19. Barbara and Earl Hilliard resigned as caretakers in June of 1990 after an argument with Bernice Hangsleben regarding their ability to accept a
voucher as payment for rent. The Hilliards were replaced as caretakers by Marilyn Gunderson and her husband or boyfriend.

20. During May and June of 1991, apartment units in Evergreen Estates were available for rent.

21. Guillermo Torres and his wife, Mary Torres; Guillermo's son, Richard Torres; Guillermo's brother, Alonzo Torres, and his wife; and Mauro Rodliguez and his wife, Gloria, were employed as migrant workers in the sugar beet industy in the Polk County area during the summer of 1991. They and their spouses traveled together to Minnesota in May 1991.

22. Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez visited Evergreen Estates on May 13, 1991, seeking to rent apartments. Guillermo Torres, Mauro Rodriguez, and Alonzo Torres were each looking for a two-bedroom apartment for themselves and their wives. Richard Torres was looking for a one-bedroom apartment. They noticed a sign in front of Evergreen Estates indicating that there were apartments to rent. When they went to the office and asked about apartments, the caretaker (Marilyn Gunderson) told them that they had some apartments for rent and asked a man (Ms. Gunderson's husband or boyfriend) in the office to show them the apartments. After they toured the available apartments, the group returned to the office and told Ms. Gunderson that they wanted to rent some apartments. Ms. Gunderson said "all right." When they showed her the Shelter Forms they each had brought, Ms. Gunderson said she was not allowed to fill them out, told them that her boss did not fill out Shelter Forms or accept vouchers, and refused to give them a rental application to complete. The, then left Evergreen Estates and went to Polk County Social Services.

23. After talking to Mary Bravo of Polk County Social Services, Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodgriguez returned to Evergreen Estates. They had brought vouchers with them this time, and were prepared to pay rent and a security deposi for the two- and one-bedroom apartments they sought. Ms. Gunderson spoke to them outside the office and would not let them come into the office wher they returned. They tried to show Ms. Gunderson the vouchers that they had received from Polk County Social Services and were again told that she could not accept such vouchers.

24. After Evergreen Estates refused to take Guillermo Torres' rental application on May 13, 1991, he and his wife, Mary Torres, looked every day for another apartment to rent in the area. Mary Torres was unable to look for an apartment by herself because she did not have a driver's license. Guillermo and other family members split up and looked in East Grand Forks, Climax, Nielsville, Halstad, Hendrum, Ada, and Moorhead, as well as Grand Forks and several other towns in North Dakota. On May 21, 1991, they found a two-bedroom apartment for $338.00 per month. Guillermo and Mary Torres stayed in the Golf Terrace Motel in Crookston between May 13, 1991, and May 21, 1991, at a cost of approximately $37.00 per night. They were unable to work at their jobs during the time they were looking for an apartment. Their jobs would have paid them approximately $300.00 per day.

25. After Evergreen Estates refused to take Richard Torres' rental application on May 13, 1991, he looked for an apartment every day. He recalls looking in Crookston and East Grand Forks. He eventually found a one-bedroom apartment about one week later at a cost of approximately $275.00 per month. During that week, Mr. Torres stayed at the Golf Terrace Motel in Crookston at a cost of approximately $35.00 per night. He had not yet found a job in the area.

16. After Evergreen Estates refused to take Alonzo Torres' rental application on May 13, 1991, he and his wife looked for an apartment every day and eventually found one on June 3, 1991, at a cost of $338.00 per month. Before finding the apartment, they stayed at the Golf Terrace Motel in Crookston at a cost of approximately $37.50 per day. He and his wife were unable to work at their jobs during the time period they were looking for an apartment. Thev would have earned approximately $300.00 per day had they been able to work, Mr. Torres' wife does not have a driver's license and thus could not have looked for an apartment on her own Mr. Torres now lives in Texas and returned to Minnesota only for the hearing, He incurred $324.00 in travel costs and $69.00 in lodging costs to attend the hearing.

27. After Evergreen Estates refused to take Mauro Rodriguez's rental application on May 13, 1991, he and his wife, Gloria Rodriguez, looked for an apartment every day and eventually found one on approximately June 4, 1991. The cost of the apartment was $275.00 per month. Prior to finding an apartment, they stayed at a motel on the outskirts of Crookston and incurred motel costs of approximately $38.50 per night. During the time they were looking for an apartment, Mauro and Gloria Rodriguez were unable to work at their jobs. Had they been able to work, they would have earned about $400.00 per day. Gloria Rodriguez does not have a driver's license and thus could not have looked for an apartment on her own. Mauro and Gloria Rodriguez currently live in Texas. They and their family incurred travel, food, lodging and gasoline expenses in the amount of $450.00 to travel from Texas to Crookston for the hearing in this matter, and expected that it would cost approximately the same amount of money to return to Texas. They also incurred $37.50 in motel costs in Crookston the night before the hearing.

28. During May of 1991, two-bedroom apartments at Evergreen Estates cost approximately $330 00 to $375.00 per month. One-bedroom apartments a! Evergreen Estate, during the same period cost $225.00 to $275.00 per month.

29. Renata Ortego, Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez filed charges of discrimination with the Department of Human Rights regarding the alleged discriminatory practices and the Commissioner of Human Rights determined after investigation that there was probable cause to believe that the Respondents had committed unfair discriminatory practices.

30. Evergreen Estates rented an apartment to Francisco Flores and Angela Bruce (a Hispanic couple) and their son at 210 Gateway Drive from May 1989 until approximately November 1989. The Hangslebens worked with the Housing and Redevelopment Authority in East Grand Forks when Francisco and Angela began to receive rent assistance on June 1, 1989. (Exhibit 22.)

31. Following a stroke suffered by Mr. Hangsleben on April 28, 1990, the Hangslebens decided to sell some of their assets to their sons. On January 15, 1991, Mr. and Ms. Hangsleben sold several parcels of land, including farm property and a "shop building" currently rented to Chemlawn, to their sons because of their concerns about Mr. Hangsleben's health. The sale was accomplished in two separate purchase agreements. The ;ales agreement which apparently involved the shop building called for the Hangslebens' sons to pay a purchase price of $50,000.00, with $10,000.00 to be paid in cash on January 15, 1991, $10,000.00 to be paid in cash on or before June 15, 1991,

and the remaining $30,000.00 to take the form of the ;ons' forgiveness of a prior loan that the Hangslebens owed to their sons. The sales agreemert which apparently involved the farm property called for the Hangslebens' sons to pay a purchase price of $50,000.00, with $20,000.00 in cash to be paid on January 15, 1991, $10,000.00 in cash to be paid on or before June 15, 1991, and the remaining sum of $20,000.00 to be treated as a gift by the Hangslebens to their sons. (Exhibit 5.) By verbal agreement, the farm machinery and cattle owned by Mr. and Ms. Hangsleben were ircluded in the sale of the farm property, and Mr. and Ms. Hangsleben were allowed to retain the 1991 rental income from the shop building.

32. The Hangslebens no longer own Evergreen Estates. American Federal Savings and Loan foreclosed on the buildings located at 1120 Third Avenue Northwest and 1128 Third Avenue Northwest in either late 1991 or early 1992, and Twin City Federal foreclosed on the buildings located at 210 Gateway Drive Northwest and 220 Gateway Drive Northwest prior to the hearing. The sheriff's sale of the former two buildings had occurred sometime prior to the hearing, and the sale of the latter two buildings was scheduled for July 17, 1992.

33, In 1990, Mr. and Ms. Hangsleben reported adjusted gross income in the amount of -$3,743.00 on their federal income tax form. This amount included wages of $1,200.00, taxable interest income of $2,902, capital gains of $7,384, rental losses of $5,341.00, and farm losses of $9,888.00. (Exhibit 3.)

34. In 1991, Mr. and Ms. Hangsleben reported adjusted gross income in the amount of $9,275.00 on their federal income tax form. This amount included wages of $6,300.00, taxable interest income of $499.00, rental income for Evergreen Estates and a building rented to Chemlawn which is now owed by the Hangslebenn' sons of $18,007, farm losses of $5,626.00, net operating losses of $9,843.00, and a $62.00 penalty for early withdrawal of savings. (Exhibit 4.)

3 5. Mr. and Ms. Hangsleben currently have no source of income other than

social security received by Mr. Hangsleben. They will have no farm or rental income during 1992.

36. The parties waived the requirement set forth in Minn. Stat. 363.071, subd. 2 (1990), for personal service on the Respondents and service by registered or certified mail on the Complainant.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction herein and authority to take the action ordered under Minn. Stat. 14.50 and 363.071 (1990).

2. The Notice of and Order for Hearing is in all respects proper. Although there was no direct evidence of the precise date on which the discrimination charges were filed, the service upon the Respondents of the charges or the probable cause determinations, or the failure of conciliation

efforts, no objection was raised by the Respondents regarding any of these matters. Moreover, it was clear at the hearing that the Respondents in fact participated in the investigation of the charges and provided the Department of Human Rights with various materials for its consideration. There is direct evidence that the Department has complied in all other respects with all procedural and substantive requirements of law or rule.

3. The Minnesota Human Rights Act provides that it is an unfair discriminatory practice for an owner or managing agert "to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or groups of persons any real property because of..... race, national origin . . . . [or] status with regard to public assistance . . Minn Stat. 363.03, subd. 2(l)(a) (1990). The Act further prohibits discrimination "against any person or group of persons because of..... race, . . . national origin, . . . [or] status with regard to public assistance..... in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith Minn. Stat. 363.03., subd. 2(l)(b) (1990).

4. The Minnesota Human Rights Act defines "status with regard to public assistance" to mean "the condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state of local subsidies, including rental assistance or rent supplements." Minn. Stat. 363.01, subd. 42 (1990).

5. Evergreen Estates constitutes real property within the meaning of Minn. St at. 363.01 (37, (1990) .

6. Oscar and Bernice Hangsleben are owners having the right to rent or lease real property within the meaning of Minn. Stat. 363.03, subd. 2(l) (1990).

7. Barbara and Earl Hilliard and Marilyn Gunderson are managing agents of the owner having the right to rent or lease real property within the meaning of Minn. Stat. 363.03, subd. 2(l) (1990).

8. The Complainant has the burden of proof to establish by a preponderance of the evidence that the Respondents engaged in unlawful

discrimination.

9. The Complainant established a prima facie case of discrimination by the Respondents with respect to the refusal to rent or lease real property to Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez, because of their race/national origin and their status with regard to public assistance, and discrimination in the terms, conditions or privileges of the rental or lease of real property with regard to Renata Ortega because of her race/national origin and status with regard to public assistance.

10. To the extent that the Respondents articulated legitimate, nondiscriminatory reasons for their treatment of Charging Parties Guillermo Torres, Richard Torres, Alonzo Torres, Mauro Rodriguez, and Renata Ortega, the Complainanat established by a preponderance of the evidence that the Respondents' articulated reasons for their treatment of the Charging Parties were mere pretexts for discrimination and are not worthy of belief.

11. The Respondents engaged in an unfair discrimirotory practice in violation of the Human Rights Act by refusing to rent or lease real property to Guillermo Torres , Richard Torres, AI onzo Torres, and Mauro Rodriguez on the basis of their race/national origin and status with regard to public assistance and by discriminating against Renata Ortega in the terms, conditi ons or privileges of the renti I or lease of real property on the basi of her race/national origin and status with regard to public assistance.

12. The Respondents have the burden of proof to establish that the Charging Parties failed to mitigate their damages.

13. The Respondents failed to carry their burden of establishing that the Charging Parties failed to mitigate their damages.

14. Minn. Stat. 363.071, subd. 2 (1990), permits an award of compensatory damages up to three times the amount of actual damages sustained by an aggrieved party who has suffered discrimination. The Charging Parties are entitled to the following award; of compensatory damagen:

a. Renata Ortega: $172.95 in costs to attend the hearing in this matter (total includes child care expenses of $65.00, gasoline expenses of $76.00, and motel expenses of $31.95);

b. Guillermo Torres: $2,096.00 in actual damages (total includes eight nights in a motel at $37.00 per night and six days of lost wages for Guillermo and Mary Torres at $300.00 per day);

c. Richard Torres: $245 00 in actual damages (total includes seven nights in a motel at $35.00 per night);

d. Alonzo Torres: $5,680.50 in actual damages (total includes twenty-one nights in a motel at $37.50 per night, fifteen days of lost wages for Mr. Torres and his wife at $300 per day, and $393.00 in travel and lodging costs to attend the hearing in this matter); and

e. Mauro Rodriguez: $6,047.00 in actual damages (total includes twenty-two nights in a motel at $37.00 per night, sixteen days of lost wages for Mr. Rodriguez and his wife at $300 per day, and $400.00 in travel costs and $37.50 in motel costs to attend the hearing in this matter).

15. Under Minn. Stat. 363.071, subd. 2 1990), victims of discrimination are entitled to compensation for mental anguish and suffering resulting from discriminatory practices. The Charging Parties experienced mental anguish and suffering as a result of the Respondents' discriminatory conduct and are entitled to compensation for the mental anguish and suffering they have sustained in the following amounts:

a. Renata Ortega: $5,000;

b. Guillermo Torres: $2,000;

c. Richard Torres: $2,000;

d Alonzo Torres: $2,000; and

e. Mauro Rodriguez: $2,000.

16. Under Minn. Stat. 363.071, subd. 2, and the standards set forth in Minn. Stat. 549.20 (1990), punitive damages may be awarded for discriminatory acts where there is clear and convincing evidence that the acts of the employer show a deliberate disregard for the rights or safety of others. In this case, given the financial resources of the Respondents, it is not appropriate to award punitive damages.

17. Minn. Stat. 363.071, subd. 2 (1990), requires the award of a civil penalty to the State when an employer violates the provisions of the Human Rights Act. Taking into account the seriousness and extent of the violation, the public harm occasioned by it, the financial resources of the Respondent, and whether the violation was intentional, it is appropriate to require the Respondents to pay a civil penalty to the State in the amount of $1,000.00.

18. These Conclusions are made for the reasons set forth in the Memorandum which follows. The Memorandum is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. The Respondents shall cease and desist from the discriminatory practices set forth herein.

2. The Respondents shall be jointly and severally liable to the Charging Parties and shall pay each of them the following amounts:

a. Renata Ortega: actual damages in the amount of $172.95 and damages for mental anguish and suffering in the amount of $5,000.00;

b. Guillermo Torres: actual damages in the amount of $2,096.00 and damages for mental anguish and suffering in the amount of $2,000.00;

c. Richard Torres: actual damages in the amount of $245.00 and damages for mental anguish and suffering in the amount of $2,000.00;

d. Alonzo Torres: actual damages in the amount of $5,680.50 and damages for mental anguish and suffering in the amount of $2,000.00; and

e. Mauro Rodriguez: actual damages in the amount of $6,047.00 and damages for mental anguish and suffering in the amount of $1,000.00.

3. The Respondents shall pay a civil penalty of $1,000.00 to the General Fund of the State of Minnesota. The payment shall be filed with the

Commissioner of the Department of Human Rights for submission to the General Fund.

Dated this 10th day of September, 1992.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape recorded (four tapes); no transcript prepared.

MEMORANDUM

This proceeding was brought by the Complainant under the Minnesota Human Rights Act. The Act specifies that it is an unfair discriminatory practice for owners or managing agents of real property to refuse to rent real property or otherwise discriminate in the terms, conditions, or privileges of rental because of race, national origin, or status with regard to public assistance. "Status with regard to public assistance" is defined to include the condition of being a recipient of public assistance or being a tenant receiving public subsidies "including rental assistance or rent supplements." The Complainant asserts that the racial/ethnic composition of those seeking public assistance in Polk County changes in May and June of each year due to the number of Hispanic migrant farm workers entering the area. The Complainant argues in this case that the Respondents discriminated against Renata Ortega based upon her race and her status as a recipient of public assistance by renting her an apartment that was malodorous and inferior to the one she was shown prior to submitting her rental application, refusing to allow he; to move to a nicer apartment because those apartments were for "whites," and refusing to accept vouchers she obtained from Polk County Social Services because of her race and public assistance. The Complainant also contends that the Respondents discriminated against Guillermo Torres, Richard Torres, Mauro Rodriguez, and Alonzo Torres because of their race and public assistance status by refusing to fill out a Shelter Form provided by Polk County Social Services, refusing to accept vouchers in payment of rent or damage deposits, and refusing to allow them to complete a rental application.

The complaint and amended complaint filed in this matter allege discrimination against "Spanish-surnamed Americans" based or public assistance and "race." Judicial notice was taken on the record at the hearing that the Charging Parties are Hispanic individuals. Discrimination against Hispanics has often been viewed as constituting discrimination based on national origin rather than race. See A. Larson & L. Larson, Employment Discrimination

94.21(a) (1992), and cases cited therein. As the Larson treatise goes on to make clear, several courts have employed a less restrictive approach which recognizes that "Hispanics are frequently identified as 'nor-whites,'" and that discrimination against Hispanics can also be racial or quasi-racial in nature. Id. at E $SRQWH Y 1DWLRQDO 6WHHO 6HUYLFH &HQWHU) Supp. 198 (N.D. Ill. 1980); see also Al-Khazraji v. St. Francis College, 784 F.2d 505 (2d Cir. 1986), aff'd, 107 S.Ct. 2022 (1987); Manzanares v. Safeway Stores, Inc., 593 F.2d 968 (10th Cir. 1979); Ortiz v. Bank of Americo, 547 F.

Supp. 550 (E.D. Cal. 1982). The distinction between race and national origin only achieves importance in cases alleging violations of the federal Civil Rights Act of 1866 (42 U S.C. 1981) because that statute does not cover national origin discrimination per se. The distinction is not critical here, since the Minnesota Human Rights Act equally prohibits discrimination on the basis of race and national origin. The nature of the discriminatory acts alleged was made clear in the complaint and at the hearing in this matter, and the Responderts raised no objections regarding the Complainant's characterization of the type of discrimination involved. in fact, evidence ,resented at the hearing which has been credited by the Judge suggests that it was Ms. Hangsleben's view that Renata Ortega was not eligible to move to a nicer apartment because she was not "white." Thus, because it is unnecessary to "label" the discrimination in this case as involving either "race" or "national origin" to the exclusion of the other, the Administrative Law Judge has treated this case as one alleging discrimination on the basis of "race/national origin."

Liability for Discrimination

The Minnesota Supreme Court has often relied upon federal case law developed in discrimination cases arising under Title VII of the Civil Rights Act of 1964 in interpreting Minnesota's Human Rights Act. Specifically, the Supreme Court has adopted the method of analysis of discrimination cases first set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973). Danz v. Jones, 263 N.W.2d 395, 399 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715, 719 (Minn. 1986). The approach set forth in McDonnell Douglas consists of a three-part analysis which first requires the complainant to establish a prima facie case of disparate treatment based upon a statutorily prohibited discriminatory factor. Once a prima facie case is established, a presumption arises that the respondent unlawfully discriminated against the complainant. The burden of producing evidence then shifts to the respondent who is required to articulate a legitimate, nondiscriminatory reason for its treatment of the complainant. If the respondent establishes a legitimate, nondiscriminatory reason, the burden of production then shifts to the complainant to demonstrate that the respondent's claimed reasons were pretextual. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 623 (Minn. 1989). The burden of proof remains at all times with the complainant. Fisher Not Co v. Lewis ex rel. Garcia, 320 N.W.2d 731 (Minn. 1982); Lamb v.

Village of Bagley, 310 N.W.2d 508, 510 (Minn. 1981).

The elements of a prima facie case of discrimination vary depending upon the type of discrimination alleged, and must be tailored to fit the particular circumstances. A prima facie case of discrimination in the rental of real property or in the terms and conditions of rental is established by showing that

(1) The charging party is a member of a protected class;

(2) The charging party applied for and was qualified to rent certain property or housing;

(3) 'he charging party was rejected as a tenant for was subjected to adverse treatment in contrast to the treatment of

similarly- situated individuals who were not members of a Protected class);

(4) In the case of a refusal to rent, the housing or rental property remained available thereafter.

See Department of Human Rights v. Spiten, 424 N.W.2d 815, 818 (Minn. Ct. App. 1988).

It is concluded that the Complainant proved a prima facie case of discrimination based on race/national origin and public assistance status with respect to each of the Charging Parties. There is no dispute in the present case that the Charging Parties were members of two protected classes: Hispanics and recipients of public assistance. I/ The Complainant clearly demonstrated that Guillermo Torres, Richard Torres, Mauro Rodriguez, and Alonzo Torres sought to apply to rent apartments at Evergreen Estates and were prepared to pay appropriate rent and damage deposits by the use of vouchers from Polk County Social Services, but were denied the opportunity to complete a rental application. 21 It was undisputed that apartments were available for rent at the time. The Respondents did not introduce any persuasive evidence which tended to undermine any of the elements of the prima facie showing made by the Complainant with respect to these individuals.

The Administrative Law Judge is also persuaded that the Complainant established a prima facie case with respect to Renata Ortega. It in evident that Ms. Ortega applied for and was qualified to rent an apartment at Evergreen Estates; in fact, she was accepted as a tenant and was assigned a rental apartment. The Judge is also convinced that Ms. Ortega was shown an apartment that was nicer than the one she was given when she actually moved in, was given an odorous apartment, and was refused the opportunity to move to

I/ As noted above, the Complainant asked at the hearing that judicial notice be taken that the Charging Parties were Hispanic. The Respondents had no objection, and such notice was taken. Evidence presented at the hearing

demonstrated that the Charging Parties received public assistance from Pclk County Social Services. In fact, the evidence in this matter indicates that the two types of discrimination alleged in this matter are closely intertwined. During the summer sugar beet season, it was established that the racial/ethnic composition of those receiving public assistance and using vouchers in Polk County changes with the arrival of Hispanic migrant farm workers. Ms. Hilliard testified that the only vouchers she ever saw while a caretaker at Evergreen Estates were from Hispanics.

21 Although it was not possible for the Complainant to establish under these circumstances that these individuals were in fact "qualified" to rent the apartments in question because they were never allowed to complete an application form or provide the requisite references, the discrimination complained of in this situation is the discriminatory refusal to allow the Charging Parties to even apply for rental due to their race/national origin and public assistance status, and the requisite prima facie showing must be modified accordingly.

a more desirable apartment even though such apartments were available because the such apartments were for "whites," and thus was treated differently than similarly-situated tenants who were not members of protected classes. Although the Respondents denied that the apartment rented to Ms. Ortega had an odor, both Ms. Ortega and Barbara Hilliard testified to the contrary, and their testimony is c redited in this regard. a/ Moreover, the evidence es tabli shed that a similar situati on had arisen with respect to another Hispanic couple in the past. In that situation, the Hispanic couple was relegated to an apartment which smelled of pet odor while the more desirable apartment that they had been shown was rented to a white couple who did not seek to rent the apartment until after Hispanic couple. Although there was no direct evidence that whites had been allowed to change apartments under similar circumstances , there was direct evidence of discrimi nation by vi rtue of Ms. Hangsleben's statement that the apartments with newer carpeting were for "whites." The Complainant a I so demon strated th rough the testimony of Ms . Hilliard, Mr. Vasicek, and Ms. Ortega that a voucher supplied by Ms. Ortega for the payment of rent was not honored. Accordingly, it is concluded that the Complainant has proven a prima facie case of discrimination based upon race/national origin and status with regard to public assistance.

The Respondents proffered several explanations for their conduct in an effort to show that their treatment of the Charging Parties was based on legitimate, nondiscriminatory reasons. These explanations are discussed below. The Administrative Law Judge has concluded that the Complainant demonstrated that these purported reasons are a mere pretext for discrimination by showing that it is more likely that the Respondents' motives were improper or biased and that the reasons advanced by the Respondents were not worthy of credence. See Shockency v. Jefferson Lines, 439 N.W.2d 715, 719 (Minn. 1989).

The Respondents argued, first, :hat their refusal to complete the Shelter Form for Guillermo Torres, Richard Torres, Mauro Rodriguez, and Alonzo Torres was justifiable bec ause the form cannot be truthfully completed by a landlord prior to the time that an apartment is actually rented to an individual. They

emphasized that Evergreen Estates required references to be supplied and checked prior to the acceptance of a tenant, and thus conterded that the Charging Parties could not properly be deemed "tenants" at the point they presented the Shelter Form. In support of their positi on , the Respondents

3/ The Complainant's case relied to a great extent upon the testimony of Ms. Hilliard, a former caretaker for the Respondents. There clearly is some animosity between the Hangslebens and Barbara Hilliard. There has been a prior dispute between them involving an accusation that Ms. Hillard had the Hangslebens' phone disconnected, and Ms. Hangsleben alleges that Ms. Hilliard threatened to get even with her when Ms. Hilliard resigned as caretaker. However, Ms. Hilliard gave straightforward and convincing testimony regarding Ms. Ortega's situation and the Respondents' practices with respect to rental to Hispanics and those receiving public assistance. Moreover, her testimony was corroborated in several key respects by Mike Vasicek and was entirely consistent with testimony provided by the Charging Parties. The Judge thus finds that Ms. Hilliard's testimony was credible in all respects.

pointed to questions on the form which request "Tenant Name," "Date Moved In," "Amount of rent paid by tenant," "Is the current rent paid?," "Damage Deposit Paid?", etc. It is evident that a landlord could alleviate any concern he or she may have in this regard by pencilling in minor modifications to the form or by supplying responses to these inquiries which clearly indicate that the tenant is a prospective tenant by, for example, giving future dates, inserting the word "prospective" before "tenant" or referring to the individual as an "applicant," and supplying the amount of damage deposit and rent "to be paid." Moreover, it is clear from the testimony of Nicollette Love of Polk County Social Services that the agency does not insist upon the submission of the Shelter Form and is willing to accept other written or verbal communications from a landlord in order to verify the residence of a public assistance recipient. This explanation for the Respondents' conduct is not worthy of belief.

The Respondents also attempted to rationalize their policy of refusing to accept vouchers in payment of rent or damage deposits by contending that submission of a voucher does not guarantee later payment and alleging that it would be unfair to tenants who are required to pay their deposit and the first month's rent before they first move in if tenants receiving public assistance are allowed to submit vouchers for such payments and are, in effect, permitted to pay later. These explanations also are unworthy of credence. Submission of a personal check also does not guarantee payment, yet the Respondents presumably accept checks in payment of rent and damage deposits. The Complainant demonstrated that vouchers are paid by Polk County twice a week, and thus landlords would wait no longer for payments based upon vouchers than they wait for checks to clear. Moreover, because the Human Rights Act expressly forbids discrimination based upon "the condition of . . being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements," there is no basis for the Respondents' assertion that they are free to refuse to accept such vouchers under the guise of treating their non-public assistance tenants "fairly."

With respect to Renata Ortega's claim, the Respondents generally alleged

that, when someone takes an apartment, he or she is not allowed to move from place to place. The testimony of Ms. Ortega and Ms. Hilliard regarding the condition of the apartment given to Ms. Ortega, the fact that Ms. Ortega was not given the apartment she was first shown, and Ms. Hangsleben's statement that the nicer apartments were for "whites" was persuasive and is credited. Under these circumstances, there is direct evidence that the Respondents' conduct reflected bias or improper- motive rather than reliance upon a general policy of refusing to allow tenants to move from place to place. The other allegations made by the Respondents with respect to the information supplied by Ms. Ortega on her rental application, her treatment of her children, and the circumstances of her departure from Evergreen Estates simply is not pertinent in considering whether Ms. Ortega was discriminated against at the beginning of her tenancy based on her race/national origin and public assistance status. The Complainant has established by a preponderance of the evidence that the purported justification for Ms. Ortega's treatment was a mere pretext for discrimination.

The Respondents also alleged that they had rented to Hispanics and public assistance recipients in the past and had told their caretakers that they

"have to look out for discrimination." With respect to evidence of past rentals, they provided a letter from the East Grand Forks Housing and Redevelopment Authority indicating that they rented to Francisco Flores and Angela Bruce, a Hispanic couple, from May 1989 to November 1989 and that the couple began to receive public assistance in June 1989. This fact does not preclude a finding that the particular Charging Parties in the present case were, in fact, the victims of discrimination based upon the evidence presented in this contested case proceeding. In addition, the Charging Parties complain of treatment that occurred one and two years after Mr. Flores and Ms. Bruce became tenants at Evergreen Estates, and it in possible that the Respondents' practice changed during this time. The Respondents did not provide any detailed evidence regarding specific policies or discussions with respect to their claim that caretakers were warned to "look out for discrimination." Moreover, the Judge is persuaded that the discrimination which occurred against Hispanics and public assistance recipients in this case resulted from Ms. Hangsleben's own directives. The Human Rights Act renders owners liable for discrimination in the rental of real property, and this case presents an appropriate circumstance for the imposition of such liability.

Relief

Minn. Stat. 363.071, subd. 2 (1990), authorizes an award of compensatory damages to the victims of discrimination under the Human Rights Act. The general purpose of the damages provision is to make victims of discrimination whole by restoring them to the same position they would have attained had no discrimination occurred. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2D 619, 626 (Minn. 1988); Brotherhood of Railway and Steamship Clerks v. Balfour, 303 Minn. 178, 229 N.W.2d 3, 13 (1975). Persons complaining of discrimination do, however, have the duty to use reasonable diligence to minimize their damages. See Anderson, 417 N.W 2d at 626, quoting Ford Motor Co. v. EEOC, 258 U.S. 219, 231 (1982). The respondent bears the burden of proving that a charging party failed to mitigate his or her damages. Sias v. City Demonstration Agency, 588 F.2d 692 (9th Cir. 1978); Sprogis v. United Airlines, 517 F.2d 387 (7th Cir. 1975); accord Henry v. Metropolitan Waste Control Commission, 401 N.W.2d 401, 406 (Minn. Ct. App. 1987) (discharge of veteran); Spurck v. Civil Service Board, 42 N.W.2d 720, 727 (Minn. 1950) (discharge of public employee).

The Respondents argue that the fact that Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez cannot recall many of the names of the apartment buildings they contacted in May and June of 1991 (after Evergreen Estates refused to rent to them) renders implausible their testimony that they used due diligence to look for other places to live. The Respondents did not provide evidence that any other landlord in the vicinity in fact had apartments for rent during that time period. The Administrative Law Judge is not persuaded that the Charging Parties' mere inability to remember at the time of the hearing the names of specific apartments they

contacted more than one year before undermines their consistent testimony that they diligently looked for a place to live every day following their rejection by Evergreen Estates. The brief contact with a landlord customarily made by a prospective tenant engaged in apartment hunting does not render it surprising that the tenant may not recall the landlord's name, particularly when the tenant makes a number of inquiries in a relatively short period of time. The

Charging Parties were able to identify numerous communities in Minnesota and North Dakota in which they looked for apartments. They further testified that they were not reimbursed by Polk County Social Services for the cost of the motels in which they were staying at the time, and were unable to work in their jobs in the fields until they located a place to live. Mr. Rodriguez gave particularly compelling testimony regarding his family's situation, indicating that they had nothing but sandwiches to eat due to the lack of a kitchen in the motel room. This evidence suggests that the Charging Parties were in fact motivated to find an apartment as quickly as possible. It is concluded that the Charging Parties in fact acted reasonably and diligently in finding an apartment, and the Respondents have not borne their burden to show that the Charging Parties failed to mitigate their damages.

The Administrative Law Judge is persuaded that it is appropriate to require the Respondents to reimburse the Charging Parties for motel charges, wages they and their wives lost as a result of their inability to work while they were searching for a place to live, and reasonable expenses associated with attending the hearing in this matter. The Administrative Law Judge has however, made certain adjustments in the amount claimed by Mauro Rodriguez. Based upon the testimony of Guillermo Torres and Alonzo Torres, it is concluded that Mauro Rodriguez and his wife together could have earned approximately $300.00 per day in the fields rather than the $400.00 Mr. Rodriguez estimated at the hearing. The testimony of Guillermo Torres and Alonzo Torres supports the use of the $300.00 amount, and Alonzo Torres indicated that "all of us earn the same." In addition, the Respondents should not have to bear the costs associated with the transportation of the entire family of Mr. Rodriguez from Texas to the hearing. Mr. Rodgriguez thus has been found to be entitled to compensation for $400.00 in travel costs, rather than $900.00. This amount approximates the expenses incurred by Alonzo Torres for his trip to the hearing from Texas.

Minn. Stat. 363.071, subd. 2 (1990), authorizes an award of compensation for mental anguish and suffering resulting from discriminatory practices. It is appropriate to order such awards in the present case. The record supports the conclusion that the Charging Parties genuinely suffered as a result of their treatment at Evergreen Estates and were directly harmed by

the discriminatory conduct. Ms. Ortega was visibly upset at the hearing and broke into tears during her testimony. She stated that she felt embarassed and humbled when she was told of Ms. Hangsleben's decision that the nicer apartment she sought was reserved for "whites." She testified that she had given Evergreen Estates cash and a voucher, and felt that she did not have anywhere else to go. Her son was told by Ms. Hangsleben that no Mexicans were living at Evergreen Estates, he should leave the premises, and all Mexicans were liars. Ms. Ortega's testimony reflected her concern about the adverse impact the discriminatory treatment could have on her sons. She told her sons that they did not want to live at Evergreen Estates because the apartment smelled so bad, and did not tell them until later what Ms. Hangsleben had said about the apartments with newer carpet being for "white people." Under these circumstances, it is appropriate to award damages for the mental anguish and suffering experienced by Ms. Ortega and her children in the amount of $5,000.00.

The other Charging Parties are also entitled to receive compensation for mental anguish and suffering. Guillermo Torres indicated that he felt angry

and humiliated when he was refused the opportunity to complete a rental application at Evergreen Estates. While Alonzo Rodriguez, Mauro Rodriguez, and Richard Torres had difficulty finding the words to express their feelings and simply stated that they felt bad and believed they had been discriminated against and treated unfairly, they were also upset and emotional in their testimony and it was evident that they had also been greatly affected by the discrimination they had suffered. Both Guillermo Torres and Alonzo Torres indicated that they were reminded of their treatment when they traveled as boys in Colorado in the 1950s and saw signs restricting access to restaurants and bathrooms by Mexicans. Mauro Rodriguez indicated that he "would rather not say" how he felt at the time due to the condition his family was living in while they searched for an apartment, and testified that they only had sandwiches to eat during this time. Guillermo Torres, Richard Torres, Alonzo Torres, and Mauro Rodriguez have each been awarded $2,000.Oe in damages for the mental anguish and suffering they experienced.

Minn. Stat. 363.071, subd. 2 (1990), authorizes an award of punitive damages in an amount of not more than $8,500. The statute requires that punitive damages be awarded pursuant to Minn. Stat. 549.20. That statute requires, inter alia, that punitive damage awards take into consideration "the financial condition of the defendant." As set forth in the Findings above, the Evergreen Estates apartments went through foreclosure proceedings and are no longer owned by the Hangslebens. The Respondents have sold their other holdings to their sons, and testified that Mr. Hangsleben's social security income will be their only income during 1992. Although the Respondents testified that they had approximately $300.00 in their checking account at the time of the hearing, and had no other checking or savings accounts, stock, or mutual funds, the sales agreements submitted following the hearing indicate that they should have received $30,000.00 in cash on January 15, 1991, and an additional $20,000.00 in cash by June 15, 1991. The Hangslebens were not sufficiently familiar with the terms of the sales agreement to testify in any detail at the hearing about them, and the Administrative Law Judge is troubled that no explanation was provided regarding the apparent disposition of the proceeds from the sale. Despite this concern, the Judge has concluded that, based upon the evidence presented at the hearing, it is not appropriate to award punitive damages in this instance.

Minn. Stat. 363.071, subd. 2 (1990), requires the award of a civil penalty to the State when the provisions of the Human Rights Act are violated. The Act requires that "the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent" be taken into account in assessing the civil penalty. In this case, the Respondents' discriminatory conduct was intentional and serious in nature. The

discrimination adversely affected five Charging Parties and perhaps other individuals. The discriminatory acts involved here are obviously in violation of well-established human rights laws and a matter of great public concern. Moreover, the Complainant has undoubtedly incurred substantial costs in prosecuting this matter. When the financial resources of the Respondent, are considered, however, it would not be appropriate to award a substantial civil penalty in this matter. Taking into account all of the above factors, it is proper to award a civil penalty in this matter of $1,000.00.

B.L.N.